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SUBJECT: THAI RETAILING LAW: LEAVE IT FOR THE COMMITTEE TO
DECIDE

REF: A. BANGKOK 2008

[1](#)B. BANGKOK 2736

[1](#)1. SUMMARY. The draft Retail and Wholesale Business law has produced no shortage of polemics, pitting small versus large retailers (Ref. B). A close reading of the bill itself does little to dispel the uncertainty generated in anticipation of the law. The draft law lays out a variety of structures and procedures, including provisions for National and Provincial Wholesale and Retail Business Supervision Boards, but leaves key questions about policies, licensing, criteria for punishments, and even which businesses will be considered controlled to the boards themselves to decide. If the law passes in its current form uncertainty will persist for investors until the boards flesh out the rules that will apply. Depending upon how the rules are defined, it is not yet clear how much of an ongoing role the boards will play, and hence to what extent retail investment will be vulnerable to the boards' subjectivity. End summary.

[1](#)2. Thailand's new draft Retail and Wholesale Business law has been hotly debated for what it will do for the country's small retailers and the impact it will have on the rapid expansion of large retailers. The polemics have carried before the draft law was completed, and during the time it was being revised, sometimes with little reference to its actual content. The knowledge that the law was in the works, with little known definitely about what it would actually do in practice has increased the level of uncertainty for potential investors in the Thai retail market. Examination of the now-available draft law reveals little about the actual rules that retailers and wholesalers will be subject to.

[1](#)3. Key features of the draft law are the establishment of National and Provincial Wholesale and Retail Business Supervision boards. The boards have significant authority. To a great extent, in fact, it is the boards that will determine the actual regulatory regime that the retail and wholesale industry will operate in. The National board will have the authority to define the policy regulating such things as location, surroundings or business size for business operation, store concentration levels, or surroundings (????). The National board will also define the types of controlled businesses by specifying the type, characteristics or size of retail and wholesale businesses, as well as defining the criteria, means and conditions for operating any type of retail or wholesale business. The board will define the criteria, means and conditions for business licensing, as well as the criteria for administrative punishments.

[1](#)4. Provincial boards will notably consider business's applications for operation, change, expansion or reduction of branches. They will also act as the responsible body for several provisions of the new law, including monitoring

retail and wholesale businesses, retail and wholesale business promotion, and administrative punishment. They will also provide opinions to the National board as it formulates its decisions establishing policies and regulations.

15. The composition of the boards is a mix of fixed and selected positions. At the national level half of the members of the boards will be the incumbents in government positions, including the Minister of Commerce as chairman and the permanent secretaries or secretary generals of the Commerce, Interior, Industrial, Public Health ministries, the State Council, the NESDB, the Consumer Protection Board, the Small-Medium Enterprise Office, and the Bangkok Metropolitan Authority Governor. The remaining members will include four experts and five representatives of institutions or NGOs. These members will go through a nomination process by a selection committee, which will also set procedures for the nominees to self-select the board members for Cabinet approval. The slightly smaller provincial boards have an analogous composition and selection process.

16. The effect of these provisions of the draft law is to transfer the formulation and application of the regulatory regime for the retail and wholesale business from the government to the yet to be formed supervisory boards. Accordingly, the extent or absence of limits to expansion of large retailers, or protections or assistance provide to small retailers - the issues of most prominent concern - remain unknown. Even after this uncertainty is resolved, potential investors will need to account for potentially different application of the regulations by different provincial boards.

17. Another significant element of the draft law relates to

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the transition period. Once the law comes into effect, it stipulates that existing businesses will need to apply for licensing within 90 days. Although it is not expected that existing businesses would be denied a license, they would need to comply with the provisions of the law and the regulations determined by the national board in their future operations. In cases where the new regulations would create situations where existing businesses are automatically out of compliance (rules governing store location, for example) it is not clear whether existing businesses would be grandfathered or forced to bring their operations into compliance, perhaps following an adjustment period.

18. When this draft law will take effect is itself unclear. Recent reports indicate that the Council of State's review of the draft has been progressing slowly. If the Council fails to complete its review of the draft for submission to the National Legislative Assembly by the end of July it may not be possible for it to complete the legislative process under the current government.

Comment

19. Thailand's first-ever Retail and Wholesale Business law has been in the works since its first drafting in 2002. It is now much closer to becoming a reality, but the uncertainty surrounding what it will mean for the retail and wholesale business environment is still great. To date this uncertainty has not prevented significant investment and expansion by mostly foreign owned large retailers in the Thai market, and this is unlikely to change unless and until the proposed supervisory boards establish restrictive policies governing the retail industry. Businesses requiring a long lead time for investment face a substantial uncertainty risk, as do current investors who may face the need to take corrective action to come into compliance with future regulations. Nevertheless, at the moment some businesses apparently feel that, to paraphrase, presence is nine-tenths of the law, and are seizing the opportunity to expand now before more restrictive regulations are formulated.

